

APPEAL NO. 020465
FILED APRIL 4, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 5, 2002. The hearing officer resolved the disputed issues by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 13th, 14th, and 15th compensable quarters because although he had some ability to work during the qualifying periods for these quarters, he "did not in good faith attempt to obtain employment commensurate with his ability to work." The claimant appeals the hearing officer's decision on sufficiency of the evidence grounds and also contends that the hearing officer was biased against him. In its response, the respondent (carrier) urges the absence of error and affirmance.

DECISION

Affirmed.

We first address the issue of the alleged bias of the hearing officer against the claimant. Having reviewed the entirety of the record, we find no evidence of the hearing officer's showing bias toward either party and no basis for the claimant's accusation. We do not find that the hearing officer abused his discretion or otherwise acted with impropriety towards the claimant.

The hearing officer did not err in determining that the claimant is not entitled to SIBs for the 13th, 14th, and 15th quarters. The requirements for entitlement to SIBs are set out in Section 408.142 and in Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 *et seq.* (Rule 130.102 *et seq.*). The one requirement at issue on appeal is whether the claimant attempted in good faith to obtain employment commensurate with his ability to work. Rule 130.102(d) sets out the ways in which this requirement can be met. In his decision the hearing officer sets out the evidence and explains why, in his opinion as the fact finder, the claimant failed to establish that he had no ability to work during the qualifying periods at issue and why the claimant failed to establish that the efforts he did make to obtain employment were sufficient to meet the requirements of Rule 130.102(d) and (e). At the hearing, the claimant proceeded on two alternate theories of having satisfied the "good faith attempt" requirement, namely (1) that he was totally unable to perform any type of work in any capacity (Rule 130.102(d)(4)), and (2) that he looked for employment commensurate with his ability to work every week of the qualifying periods and documented his job search efforts (Rule 130.102(d)(5)).

The hearing officer is the sole judge of the weight and credibility of the evidence and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel, an appellate reviewing tribunal, will not disturb the challenged factual findings of a hearing officer unless they are so against the

great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). In evaluating the claimant's documented employment search efforts, the hearing officer could consider the factors set out in Rule 130.102(e).

With respect to the claimant's having met the "good faith" requirement by having been enrolled in and satisfactorily participated in a full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC), provided for in Rule 130.102(d)(2), the claimant did not raise or urge this theory at the hearing. He did discuss a number of contacts with a TRC counselor, Mr. L, during the qualifying periods, which were reflected on his SIBs applications, but these concerned being provided with job leads by Mr. L. The claimant introduced a TRC "Case Note" dated July 5, 2001, which stated, among other things, that he "is seeking assistance w/ counseling & guidance, some type of re-training [sic] in a sedintary [sic] job, job seeking skills & job placement." He also introduced a TRC document entitled "Individualized Plan for Employment (IPE)" stating in part that the claimant has an employment goal of "psychiatric technician," that he will apply for a Pell grant and indigent health care services, and that the TRC will provide "counseling and guidance" from "07/24/2001 to 07/25/2002." The document bears the signature of Mr. L and the date "8-30-01." The line for the claimant's signature is blank. No testimony was adduced from the claimant concerning these two documents and the claimant did not take the position, in either his testimony or opening and closing statements, that he met the "good faith" requirement by being enrolled in and satisfactorily participating in a full-time vocational rehabilitation program sponsored by the TRC. Neither the evidence nor the claimant's asserted theories for recovery required findings of fact by the hearing officer concerning Rule 130.102(d)(2).

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **TRAVELERS INDEMNITY COMPANY OF CONNECTICUT** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

CONCUR IN THE RESULT:

With all due respect to my fellow, learned panel members, I believe that the hearing officer was in peril of misstating the law when, addressing the claimant's 'contacts' of searching the local newspaper's classified ads, searching the internet employment sites, and going to the Texas Rehabilitation Commission (TRC) for job leads, he wrote, "[t]hese 'contacts' can, in no way, be deemed legitimate efforts to obtain employment." While I agree that the hearing officer has the discretion, per Section 410.165(a), to determine whether these job search techniques were adequate to meet the good faith standard or whether the claimant, in truth, made these contacts *in this instance*, I would want to disabuse the hearing officer of the notion, implicit in his opinion, that, specifically, an internet search, or as the hearing officer writes "surfing the net," for employment could "in no way" be a legitimate, good faith effort to obtain employment in accord with Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(5) (Rule 130.102(d)(5)). It should be made plain that there are many avenues a claimant may use in order to make a good faith effort in his search for employment and in the year 2002, the employment sites on the internet are certainly a good source of employment information and usually have the most current employment opportunity information. One can visualize instances in which an internet job search *alone* may be one of the many legitimate paths a claimant may follow in his search for employment.

Commenting further, while the hearing officer committed no harmful, legal error, I would caution the hearing officer to more definitively address each theory proffered by the claimant in his claim of supplemental income benefits (SIBs) eligibility. In this case, the hearing officer appears to have not considered the claimant's alternative argument that he was participating in a full-time, TRC-sponsored program, in compliance with Rule 130.102(d)(2). Where I differ from the majority opinion is to the extent that I believe that the claimant adequately raised this as one of three alternative theories of SIBs eligibility he presented at the contested case hearing, and again urged on appeal. While the hearing officer implicitly covered this argument with his finding that the claimant did not make a good faith effort to seek employment, I believe that the hearing officer should have specifically addressed the issue, as it was specifically raised and argued by the claimant. The hearing officer made no finding regarding the claimant's compliance or noncompliance with Rule 130.102(d)(2), and would have been better served to have done so, as he specifically addressed, and made findings on, the "no ability" (Rule 130.102(d)(4)) and the "good faith job search" (Rule 130.102(d)(5)) arguments.

Terri Kay Oliver
Appeals Judge